

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

MARK CARMAN, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

PORTSMOUTH REDEVELOPMENT
AND HOUSING AUTHORITY,

Defendant.

Civil No. 2:22cv313

ORDER

Before the Court is a Motion for Partial Judgment on the Pleadings to the Third Cause of Action to Original Complaint – Collective Action (the “Motion”) submitted by Defendant PORTSMOUTH REDEVELOPMENT AND HOUSING AUTHORITY (“PRHA”). ECF No. 12. In its Motion, PHRA requests dismissal of Plaintiff’s third cause of action under the Virginia Overtime Wage Act (VOWA) because Plaintiff relies on defunct provisions of VOWA, Va. Code Ann. § 40.1-29.2(A)–(B), that provide for triple damages. Mem. Supp. Mot. J. on Pleadings at 1–2, ECF No. 13. Plaintiff agreed with Defendant’s contention that it relied on an outdated version of VOWA, Resp., ECF No. 15, and filed an amended complaint (ECF No. 19) citing to the current version of VOWA. In its Reply, Defendant states that it does not have any issue with Plaintiff filing the amended complaint but requests a ruling from the Court that Plaintiff would not be entitled to triple damages under Virginia Code Section 40.1-29(J) regardless of whether the trier of fact determines that PRHA acted

knowingly. Reply at 1–2, ECF No. 18. In the alternative, Defendant asks that the Court “take the matter under advisement and reserve ruling until the issue of damages is ripe for the Court’s determination.” *Id.* at 2. The Court has determined that a hearing on the Motion is unnecessary, as the issues for decision are adequately presented in the briefs. *See* E.D. Va. Local Civ. R. 7(J). The Motion is ripe for adjudication.

Because Defendant agrees that Plaintiff’s First Amended Complaint (ECF No. 19) remedies the issue raised in the Motion, and Plaintiff does not specifically seek triple damages under VOWA in the First Amended Complaint, the Court declines to rule on the issue of triple damages at this time. Without a specific dispute over triple damages, the Court finds that a ruling on the issue could amount to an impermissible advisory opinion. *See, e.g., B.R. v. F.C.S.B.*, 17 F.4th 485, 493 (4th Cir. 2021) (“Under Article III, federal courts do not adjudicate hypothetical or abstract disputes.”) (quoting *TransUnion LLC v. Ramirez*, --- U.S. ---, 141 S. Ct. 2190, 2203 (2021)). In any case, the Court exercises its discretion to reserve any ruling on this issue to a future appropriate time, should an active dispute over the issue arise. As such, the Motion (ECF No. 12) is **DISMISSED without prejudice**. The Clerk is **DIRECTED** to send a copy of this Order to counsel of record for all parties.

IT IS SO ORDERED.

May 16, 2023
Norfolk, Virginia

/s/
Arenda L. Wright Allen
United States District Judge